APPENDIX B

Judge Jensen's Opinion

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI AT INDEPENDENCE

DIVISION 13

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Plaintiff,

vs.

ONG AIRCRAFT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, ILUS W. DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Defendants.

No. 129,717

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Now on this day, this cause having heretofore been tried by the Court on the 14th day of December, 1962, the 8th day of February, 1963, the 15th day of February, 1963, and the 1st day of March, 1963, and having been submitted to the Court for final determination, judgment and decree by a Stipulation and Agreement signed by all of the parties hereto, and filed herein on the 11th day of June, 1963, and the Court, having heard the evidence and considered said Stipulation and Agreement and the briefs and argument of counsel for the respective parties hereto,

and being fully advised in the premises, and upon its own motion under the provisions of Rule 79.01 (b) Rules of Civil Procedure, makes the following findings of fact:

1. That the plaintiff, Jackson County Public Water Supply District No. 1, is a Public Water Supply District organized and existing under the provisions of Chapter 247 and Sections 247.010 to 247.220, inclusive, R.S. Mo. 1959.

2. That the defendant, City of Kansas City, Missouri, is a duly organized and existing municipality under the laws of the State of Missouri.

3. That at all material times, the defendant Hugh G. Carr, was the duly elected, qualified and acting Director of the Water Department of Kansas City, Missouri.

4. That the defendant, Ong Aircraft Corporation, is a corporation, duly organized and existing under the laws of the State of Missouri, and is engaged in developing and improving for residential purposes a subdivision in Jackson County, Missouri, known as "Crossgates;" that the part of said subdivision described as

> The North 1/2 of the SW 1/4 of Section 12, Twp. 47, Range 33, except the West 1060 feet thereof, as measured at right angles from the West line of said 1/2, 1/4 section, Jackson County, Missouri

lies wholly within the city limits of the City of Grandview, Missouri, and within the geographical boundaries of the plaintiff Water District.

5. That defendant Ong Aircraft Corporation, at its own cost and expense, has constructed and laid throughout said entire Crossgates Subdivision a complete water system, including water pipes,

mains, valves, lines, conduits and hydrants, for the furnishing and affording water service to its present and prospective purchasers of residential properties.

6. That said Water System contains and provides for 372 separate water connections, 177 of which lie within the City of Grandview, Missouri and within the present geographical boundaries of the plaintiff, Jackson County Public Water Supply District No. 1.

7. That on or about July 7, 1961, the plaintiff and defendant City of Kansas City, Missouri, made and entered into a certain written agreement, duly authorized by the Board of Directors of plaintiff and by Ordinance of the City of Kansas City, Missouri, No. 26269, and under the provisions of Section 247.160 R.S. Mo. 1959, which agreement provided that certain areas, annexed or to be annexed by the City of Kansas City, Missouri, be de-annexed or excluded from the then area of the plaintiff Water District; that certain indebtedness of the plaintiff District with respect to said annexed areas be assumed by the City of Kansas City, Missouri; and that said City of Kansas City, Missouri, agreed to furnish water to the District for a period of time; that said agreement was, by the parties thereto, presented for approval to the Circuit Court of Jackson County, Missouri, in Division 12, thereof, and by decree of said Court, entered July 28, 1961, in Cause No. 83,533, was approved; said Court, by its decree, retaining jurisdiction of said cause, as by law provided.

8. That on October 18, 1962, the defendant, Ong Aircraft Corporation, and the defendant, City of Kansas City, Missouri, acting by and through the defendant, Hugh G. Carr, Water Director, made and entered into a certain contract whereby the City of Kansas City, Missouri, agreed to furnish water

to said defendant, Ong Aircraft Corporation's Crossgates water system, including said 372 water connections, of which 177 water connections lie within the city limits of the City of Grandview and within the then geographical boundaries of the plaintiff Water District.

9. That said contract dated October 18, 1962 did not reduce or limit plaintiff Water District's geographical boundaries, or restrict or limit its taxing power with respect thereto, granted by the provisions of Chapter 247 R.S. Mo. 1959.

10. That the plaintiff Water District has suffered no irreparable damage by reason of the matters and things complained of in plaintiff's petition, and there is no credible evidence of any future irreparable damage.

The grounds for the decision of the Court are:

1. That Chapter 247 and Sections 247.010 to 247.220, inclusive, R.S. Mo. 1959, do not grant to or vest in plaintiff, Jackson County Public Water Supply District No. 1, any exclusive right or privilege to furnish water or water service within the geographical limits or boundaries of the District.

2. That the agreement of July 7, 1961, by and between the plaintiff District and defendant City of Kansas City, Missouri, did not give or grant, or purport to give or grant to the plaintiff any exclusive right or privilege to furnish water or water service within the geographical limits or boundaries of the district then remaining; nor was it the mutual purpose or intent of the parties thereto to create in or grant or give to the plaintiff any such exclusive right or privilege.

3. That the defendant, Kansas City, Missouri, had the right to furnish and to contract to furnish water beyond the territorial limits of Kansas City, Missouri, by reason of Section 91.050 R.S. Mo. 1959,

and Section 44 of Article 3, Charter of Kansas City, Missouri.

4. That defendant, Kansas City, Missouri, a municipal corporation, can not by contract, express or implied, grant exclusively to plaintiff the rights given to and vested in said city by Section 91.050, R.S. Mo. 1959 and Section 44 of Article 3, Charter of Kansas City, Missouri or part with, alienate or surrender such rights.

5. The defendant, City of Kansas City, Missouri had a legal right to contract with defendant, Ong Aircraft Corporation, to furnish water to the Crossgates Subdivision and to all parts thereof.

6. No Constitutional or statutory rights of the plaintiff have been violated or impaired by any contracts, agreements or the conduct of the defendants or any of them.

7. Upon the pleadings and the evidence the plaintiff has wholly failed to prove its right to equitable relief or to a permanent injunction.

THEREFORE, the judgment of the Court is as follows:

Now on this day, this cause having been heretofore tried by the Court on the 14th day of December, 1962, the 8th day of February, 1963, the 15th day of February, 1963, and the 1st day of March, 1963, and having been submitted to the Court for final determination, judgment and decree by a stipulation and agreement signed by all the parties hereto, and filed herein on the 11th day of June, 1963, and the Court having heard the evidence and considered said stipulation and agreement and the briefs and argument of counsel for the respective parties hereto, and being fully advised in the premises finds the issues, all and singular, against the plaintiff, Jackson County Public Water Supply District No. 1, and in favor of defendants, Ong Aircraft Corporation, a corporation, City of Kansas City,

Missouri, Ilus W. Davis, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, Hugh G. Carr, Director of Water of Kansas City, Missouri, and Earl Brosnahan and each of them, and further finds that the plaintiff's petition for a permanent injunction should be denied and that plaintiff take nothing by this suit.

WHEREFORE, it is Ordered, Decreed and Adjudged that plaintiff's petition for a permanent injunction against the defendants and each of them be and the same is hereby denied; that plaintiff take nothing by this suit and that defendants have and recover of and from the plaintiff their costs in this behalf expended and have execution therefor.

Let judgment be entered accordingly.

/s/ Richard D. Jensen
Judge

Dated this 14th day of August, 1963.

APPENDIX C

Order Denying Motion for Rehearing

IN THE KANSAS CITY COURT OF APPEALS
DECEMBER SESSION, 1966
MONDAY, DECEMBER 5, 1966

Jackson County Public Water Supply District No. 1,
Appellant,
vs.
Ong Aircraft Corp., et al.,
Respondents.
No. 24337

Now at this day the Court having considered and fully understood appellant's motion for rehearing or in the alternative to transfer to the Supreme Court herein, doth consider and adjudge that said motion for rehearing be and the same is hereby overruled and transfer to the Supreme Court is denied.

* * * * * *

STATE OF MISSOURI, Sct.

I, Mary Louise Thomas, Clerk of the Kansas City Court of Appeals, do hereby certify the above and foregoing to be a full, true and complete copy of the Opinion of the Court filed on October 3rd, 1966, of Appellant's motion for rehearing or in the alternative to transfer to the Supreme Court filed October 18th, 1966 and the Courts' Order ruling on said motion on December 5th, 1966, as fully as the same appear of record and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Kansas City, Missouri, this 28th day of December, 1966.

/s/ Mary Louise Thomas
Clerk

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF MISSOURI

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Appellant,

vs.

ONG AIRCRAFT CORPORATION, CITY OF KANSAS CITY, MISSOURI, ILUS W. DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Respondents.

Division No. .....
Case No. .....

Application to the Supreme Court for Order to Court of Appeals to Transfer

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF MISSOURI:

1. Your petitioner respectfully submits this application for a transfer to review and quash the judgment of the Kansas City Court of Appeals, constituted of the Honorable Gerald Cross, Presiding Judge, Honorable Fred L. Howard, Associate Judge, and Honorable Sam C. Blair, Associate Judge, in a certain cause styled Jackson County Public Water Supply District No. 1, plaintiff-appellant, v. Ong Aircraft Corporation, a corporation, City of Kansas City, Missouri, Ilus W. Davis, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, Hugh G. Carr, Director of Water, Kansas City, Missouri, and Earl Brosnahan, defendants-respondents, No. 24,337, wherein said Court of Appeals affirmed a judgment for the defendants-respondents herein, in an opinion by Special Judge Frank W.

Hayes. Timely motions by the petitioner for a re-hearing and for an order of transfer were overruled by the Kansas City Court of Appeals on the 5th day of December, 1966.

2. Attached hereto are the Opinion of the Court of Appeals, "Exhibit 1"; your petitioner's Motion for Rehearing and for Transfer, "Exhibit 2"; an Order of the Court of Appeals overruling said Motions for Rehearing and for Transfer, "Exhibit 3"; and the Certificate of the Clerk of said Court of Appeals authenticating the said exhibits. Presented herewith are also the suggestions in support of this Application, petitioner's Notice of Application, and Proof of Timely Service of Notice and of Application and of the Exhibits and Suggestions.

3. The cause in question was an action instituted in the Circuit Court of Jackson County, by the appellant, Jackson County Public Water Supply District No. 1, hereinafter referred to as petitioner, against the above-named respondents, to enjoin said respondents from constructing and using water supply lines in a sub-division being developed in Jackson County, Missouri, known as "Crossgates", which was located in the territorial boundaries of your petitioner. It is the contention of your petitioner that as between your petitioner and the City of Kansas City, Missouri, your petitioner has the exclusive right to supply water to that portion of the new sub-division which is within the boundaries of the water supply district, and also, that respondent, Kansas City, Missouri, is statutorily prohibited from owning, operating and maintaining a water supply system outside of the territorial limits of the City. The Trial Court made findings of fact and conclusions of law and entered judgment denying a permanent injunction against the respondents. The appellant appealed to the Supreme Court of Missouri, which court transferred the cause to the Kansas City Court of Appeals on the

ground that the Supreme Court did not have jurisdiction and because the record did not affirmatively disclose that the amount in dispute exceeded fifteen thousand dollars ($15,000.00).

4. The opinion of the court denying a permanent injunction against the respondents misinterpreted the law and is contrary to the law and directly in conflict with the decision of the Supreme Court of the State of Missouri in the case of *Taylor* v. *Dimmitt,* 78 S.W. 2d 841 (Sup. Ct. 1934). In the court's opinion (p. 7), the court states that V.A.M.S. Sec. 91.050 authorizes a city to own, construct and maintain public utility facilities outside of the territorial limits of the city which said facilities are to be used to supply public utility services to inhabitants lying without the territorial limits of said city. The *Taylor* case held that a city is without statutory authority to construct, service, and maintain facilities for the sale of its surplus public utilities outside the corporate limits of the city. The court in the *Taylor* decision stated that a city is merely authorized to sell its surplus public utilities to municipal corporations, persons, or private corporations outside the corporate limits of the city, but the statutory authorization for such sale does not carry with it the authorization to construct and maintain facilities outside the corporate limits of the city for the sale of such public utilities.

5. The opinion of the court denying a permanent injunction to your petitioner misinterpreted the law and is contrary to the law as set forth in V.A.M.S. Sec. 91.050 and is in conflict with the decision of the Supreme Court of the State of Missouri in the case of *State ex rel. Halferty* v. *Kansas City Power and Light Company,* 145 S.W. 2d 116 (Sup.Ct. 1941).

V.A.M.S., Sec. 91.050 provides as follows:

> "Any city in this state which owns and operates a system of waterworks may, and is hereby authorized and empowered, to supply water from its waterworks to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor, for such time, upon such terms and under such rules and regulations as may be agreed upon by the contracting parties."

In the *Halferty* case, supra, a water district was deemed to be a municipal corporation in the broad sense of the term. Reading the aforementioned statute in conjunction with the holding in the *Halferty* case, the only logical conclusion which may be drawn is that a city may not enter into a contract for the supply of water with persons or private corporations lying within the corporate limits of another municipal corporation (such as Jackson County Water Supply District No. 1), but moreover, a contract for supply of water to such persons or private corporations lying within the corporate limits of such other municipal corporation must be entered into by and between the supplying city and the governing body of such other municipal corporation and not by and between the supplying city and such persons or private corporations individually.

6. The opinion of the court denying a permanent injunction to the appellant misinterpreted the law and is contrary to the law as set forth in Chapter 247 of V.A.M.S. The plain meaning of the various provisions of Chapter 247 are that the legislature intended that water districts such as your petitioner should be exclusive except for such exceptions contained in Chapter 247. None of the exceptions contained in that chapter allow a city to encroach

upon the boundaries of a water district without first contracting with the district as a municipal corporation or through a process of de-annexation of a portion of that district which may lie within the corporate limits of the de-annexing city. Neither of these elements are present in the case at bar.

7. The court's opinion in this case is in direct conflict with an opinion rendered by the St. Louis Court of Appeals in the case of *Wellston Fire Protection District of St. Louis County* v. *State Bank and Trust Company of Wellston,* 282 S.W.2d 171 (St. L. C.A. 1955). Therefore, a question of great importance is presented to this court on this appeal and it is incumbent upon this court to hear the case and clarify the law in this state in order to set guidelines for the future.

The court in arriving at its decision in the case at bar did not consider the above case on its merits in making this decision for the stated reason that the appellant had failed to raise the "prior jurisdiction" doctrine in its Motion for New Trial. In support of its holding in this regard, the court cited Rule 79.03 plus three Missouri cases. All that the cited cases and rule hold is that in order for a contention to be raised in an appellate court by an appellant, the appellant must first have raised the question in its Motion for New Trial in the trial court. This requirement was amply fulfilled by paragraphs 9(c) (e) (g) of Appellant's Motion for New Trial in which the appellant contended that exclusive jurisdiction of the district resides in the Water District rather than in the City and that the City's encroachment was illegal. Rule 79.03 requires only that the proposition be raised in the Motion for New Trial, not that the reasons in support of the proposition should be advanced. The "prior jurisdiction" doctrine is a reason

in support of the contention of exclusive jurisdiction upon behalf of the Water District, and as such it was not necessary for the appellant to specifically set forth this legal doctrine in its Motion for New Trial.

If the decision of the Kansas City Court of Appeals in the instant case is allowed to stand, it will mean that municipal corporations may enter into competition with each other for the supply of public utilities. This holding is in direct contravention with the time-honored principle that public utility service may be more effectively and economically supplied on a monopolistic basis rather than a competitive basis.

The court in its opinion (pp. 8-9) dealt extensively with the question of whether or not the appellant was damaged by any loss of its taxing power. In so doing the court wholly failed to take cognizance of the fact that appellant was deprived of revenue by the City, and that such revenue is the only source from which appellant may repay its revenue bond obligations. The fact that the area in question is now producing revenue was shown by a picture allowed into evidence in the Kansas City Court of Appeals showing homes built in the southern portion of Crossgates, which homes are being served by the City and from which the City is receiving revenue income.

WHEREFORE, based on the foregoing application and the suggestions in support thereof, petitioner prays this court to issue its order of transfer directing the judges of the Kansas City Court of Appeals to certify to this court the record in said mentioned cause, and upon consideration thereof, to quash said judgment of the said Court of Ap-

peals and give such other and further relief as in the premises may appear to be proper.

Respectfully submitted,

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By /s/ Charles N. Hess & Jerry R. Linscott
Attorneys for Appellant, Jackson County Water District No. 1,
Floor 3, Union National Bank Building
Kansas City, Missouri HArrison 1-6388
Hendren & Andrae
By /s/ Henry Andrae
Attorneys for Appellant
Seventh Floor, Central Trust Building
Jefferson City, Missouri

Letter of January 5 to Chief Justice Storckman

LINDE, THOMSON, VAN DYKE, FAIRCHILD & LANGWORTHY

Clyde J. Linde
Albert W. Thomson
Harold T. Van Dyke
Clem W. Fairchild
Robert B. Langworthy
Billy S. Sparks
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Thomas J. Daly
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HArrison 1-6388
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Lowell R. Johnson
Wallace Sutherland
Of Counsel

January 5, 1967

Hon. Clem F. Storckman
Presiding Judge
Supreme Court of Missouri
Jefferson City, Missouri

Re: Application for Order to Kansas City Court of Appeals to Transfer Jackson County Public Water District No. 1 vs. Ong Aircraft, et al. No. 52709

My dear Judge:

On January 4 we filed in the Supreme Court an Application to Transfer regarding the above case. Counter Suggestions were served on us on the same day.

In re-reading our Suggestions we note that on Page 3, approximately 12 lines from the bottom we commenced a paragraph with a date of "October 18, 1966". Obviously, that should have been October 18, 1962.

We are aware that there is no provision for Reply Suggestions, but when in attempting to distinguish an "undis-

tinguishable" authority the respondents cite Exhibits and Findings that are not before the Court and misquote those Exhibits and Findings, we feel compelled to at least furnish the Court with the Exhibits and Findings being referred to. We are, therefore, attaching to this letter for your examination Exhibit 14 (a contract of October 18, 1962) and Finding of Fact Number 5, Transcript 359, both referred to in the first sentence of Paragraph 2, Page 2, the respondent's opposition Suggestions.

It will be noted that Finding of Fact Number 5 does not find that the construction was "at no cost whatever to the City of Kansas City, Missouri". Exhibit 14 expressly provides (third paragraph from bottom Page 1) that "all water mains * * * shall be the property of the City, and control, operation and right of use thereof shall be vested wholly and exclusively in the City" and on Page 2, paragraphs (a) through (d), that the City will refund to the Ong Aircraft Corporation practically all of the cost of construction initially advanced by it. As the Court can see from this evidence, the provisions of this contract place the water main extension and facilities involved in this case clearly within the prohibitions of the *Taylor* vs. *Dimmitt* decision, 78 S.W. 2d 841 (Sup. Ct. 1934).

Very truly yours,

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By

CWH:jh
Enc.
cc: Edward F. Aylward
Neil F. Cline and John L. Gaylord
Herbert C. Hoffman, attention Ned Bahr
b.c. Henry Andrae—sent 1-10-66

Contract for Water Main Extension

FIRST PARTY: The City of Kansas City, Missouri, acting through its Director of the Water Department, hereinafter called the City.

SECOND PARTY: ONG AIRCRAFT CORP. (a Missouri Corp.), P. O. Box 214, Kansas City, 41, Mo., hereinafter called the Applicant.

ESTIMATED COST: Fifty-Three Thousand Three Hundred Eighty-Seven . Dollars ($53,387.00)

TOTAL DEPOSIT REQUIRED (10% of the Estimated Cost) Five Thousand Three Hundred Thirty-Nine Dollars ($ 5,339.00)

CREDIT: (Application Fee) NONE Dollars ($.....)

BALANCE OF DEPOSIT: (To be Submitted with Contract) Five Thousand Three Hundred Thirty-Nine Dollars ($ 5,339.00)

CITY'S SHARE: (Oversize Main Only) N/A Dollars ($.....)

LOCATION OF PROPOSED WATER MAIN: 8" main in Armitage Drive, Blue Ridge to 120 Terr.; 6" & 8" in Belmont, Blue Ridge to 120 Terr.; 8" main in 120 Terr.; 8" main in Beacon, Blue Ridge to Armitage; & 6" main in Beacon 119 Terr. to 120 Terr.—All in Crossgates Subdivision. ESTIMATE No. 4901

THIS CONTRACT, made and entered into this 18th day of October, 1962.

WHEREAS, the Applicant has applied for a water main extension to be constructed in the location named above, and

WHEREAS, City has made a preliminary study and drawing of the proposed water main extension and has estimated the cost of said extension as shown above, and

WHEREAS, the Director of the Water Department in his discretion has determined that it is in the best interests to allow the Applicant to perform the construction and installation of said extension.

NOW, THEREFORE, it is agreed between the parties named above that the Applicant will construct and install the water main extension and appurtenances in accordance with the plans, specifications, and drawings which are set forth in the attached Estimate and by reference made a part hereof. This installation shall only be started after the streets and roads, in which the main is to be installed, have been graded to an extent to be determined by the Chief Engineer and Superintendent of the Water Department. All work in constructing and installing such extension shall be open to inspection by the Water Department of the City during all phases of such work. Upon the completion of said construction and installation of the water main extension and appurtenances thereto, all in accordance with the Water Department standards and specifications, the final approval by the Chief Engineer and Superintendent of the Water Department, and the furnishing of the complete cost of said construction and installation to the Chief Engineer and Superintendent, including paid bills for all labor and materials used on construction and installation, the City will accept said water main in accordance with the terms of this contract.

Applicant agrees that all water mains installed in accordance with this contract shall be the property of the City, and the control, operation, and right of use thereof shall be vested wholly and exclusively in the City; that said water mains shall be guaranteed against defective materials and workmanship for a period of one (1) year after furnishing of the complete cost of said construction and installation to the Chief Engineer and Superintendent, and

the Applicant shall have no interest therein other than the right to the refund money in the manner provided herein.

Applicant hereby pays the "Balance of Deposit" to the City, as the balance due on the total deposit, and City hereby accepts the total deposit as a nonrefundable charge for engineering, design, supervision of construction (and testing), flushing, chlorination, and other overhead costs of the City.

It is further agreed that the City shall pay the cost of connecting the water main extension to the existing water mains of the City; and that in totalling the actual cost of the construction and installation, the Applicant shall not include any charge made by the City for engineering, design, supervision of construction (and testing), flushing, chlorination, and other overhead cost of the City.

It is further agreed that the Applicant will not sell or in any way furnish or supply water outside of the limits of Crossgates Subdivision.

It is further agreed that if the plans and specifications as shown on the attached estimate include any mains larger in size than eight (8) inches, the City will pay its "share" as shown on page 1 to Applicant within ninety (90) days after acceptance of the water main extension by the City; and Applicant agrees that this shall be the City's entire share of the cost of the main extension, regardless of actual cost.

It is further understood that the "Estimated Cost" set out on page 1 is the estimated cost of a water main extension using only mains eight-inch or less in size.

It is further agreed that in totalling the actual cost of the construction and installation for refund purposes, Applicant shall deduct therefrom the "share" paid by the City.

It is further agreed that the Applicant shall be entitled to refunds on account of original customers directly and permanently connected to the main extension and on account of revenue collected from such customers, as follows:

(a) For each customer who is the occupant of a single-family dwelling or a single family portion of a multiple dwelling, the sum of Two Hundred Fifty Dollars ($250.00) per customer.

(b) For each customer qualifying for a commercial classification in the City's water rate plan, a sum equal to twenty-five (25) per cent of the revenue collected by the Water Department on account of bills for water service for meter reading dates that fall within the term of contract.

(c) Refunds shall be due and payable semi-annually from the anniversary date of this contract; no refunds can be earned or allowed after ten (10) years from the original date of this contract. The City has the option to refuse to make or allow service connections, or to pay refunds while there is a claim against the Applicant for unpaid bills for material, labor, and services arising out of construction and installation of this water main.

(d) In no event shall the accumulated refunds exceed the lesser of the following amounts:

1. Estimated cost as set out on page 1 hereof, or

2. Actual cost as furnished by the Applicant.

The liability to make refunds is contingent solely on the ability of the City to do so from appropriations for this purpose from the Water Fund. The obligation to pay refunds will be subordinate to the payment of operating expense, debt service and expenditures for other necessary capital improvements. The payment of refunds will be

made in full in the order of the date earned. There will be no interest or other charges assessed against the City for the delinquent payment of refunds.

It is further agreed that Applicant will have the said construction and installation started within six (6) months from date of this contract or City, at its option, may refund the "Balance of Deposit," as submitted with contract, to Applicant and cancel this contract.

It is understood that in the construction and installation of the water main extension and appurtenances, the Applicant is an independent contractor and is in no way acting as agent, servant, or employee of the City.

The Applicant will indemnify the City and hold the City harmless from any and all claims of any and all persons, firms, and corporations who may hereafter assert any claim of any type arising out of the construction and installation of the said water main extension and appurtenances.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Ong Aircraft Corporation
(A Missouri Corporation)
/s/ Donald H. Ong
Title President
City of Kansas City, Missouri
By /s/ Hugh G. Carr
Director of the Water Department

(Seal)

Attest
/s/ Grace M. Harris
Secy-Treas

Approved as to form and legality
/s/ Charles A. Darby
Assistant City Counselor

Finding of Fact Number 5 Circuit Court Opinion Dated November 19, 1963

5. That defendant Ong Aircraft Corporation, at its own cost and expense, has constructed and laid throughout said entire Crossgates Subdivision a complete water system, including water pipes, mains, valves, lines, conduits and hydrants, for the furnishing and affording water services to its present and prospective purchasers of residential properties.

Telegram Denying Motion to Transfer

WESTERN UNION TELEGRAM

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination.

800P C ST JAN 9 67 KA465

SSD300 K JCA174 COPLECT JEFFERSON CITY MO 9 444P CST

MESSRS LINDE THOMSON VANDYKE FAIRCHILD AND LANGWORTHY

300 UNION NATL BANK BLDG KSC

JACKSON COUNTY WATER SUPPLY DISTRICT NO. 1 VS. ONG AIRCRAFT ET AL. APPLICATION TO TRANSFER DENIED

MARION SPICER CLERK
(04).

APPENDIX E

IN THE SUPREME COURT OF THE STATE OF MISSOURI

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Appellant,
vs.
ONG AIRCRAFT CORPORATION, et al.,
Respondents.

Division No. .....
Case No. .....

Motion for Rehearing and Reconsideration

Comes now the plaintiff and applicant in the above matter and moves that the Supreme Court rehear and reconsider its Order of Denial of its Application to Transfer this cause from the Kansas City Court of Appeals, entered January 9, and for grounds of said Motion states:

1. The plaintiff, which shall hereinafter sometimes be referred to as the "District", wishes to call to the attention of the Court the following matters of law and fact which we feel the Court overlooked and misinterpreted in said denial order. On January 6, 1967, the District submitted to the Court a letter, with which there was attached an Exhibit, being a contract dated October 18, 1962, between Kansas City, Missouri, and the Ong Aircraft Corporation. January 6 was a Friday, and the Court's Order of Denial was made on Monday. Whether or not the Court fully appreciated the significance of this Exhibit we cannot tell; but since it had been referred to and incorrectly quoted by the respondents, we felt that it was absolutely im-

perative that the Court have this Exhibit before it in considering our Application for Transfer.

2. This additional Exhibit was furnished so that there could be no question that it completely corroborates the District's position that the Opinion of the Kansas City Court of Appeals was in direct conflict with the prevailing Opinion of the Supreme Court in *Taylor* v. *Dimmitt*, 78 S.W.2d 841. As pointed out in the Application to Transfer, the Kansas City Court of Appeals o/a V.A.M.S., Sec. 91.050, permitted Kansas City, Missouri to go beyond its borders and construct, own, maintain and operate a water main extension inside another municipality. Exhibit 14, the contract between Kansas City, Missouri, and Ong Aircraft Corporation, expressly provides that Kansas City, Missouri, shall own, maintain, operate and ultimately pay for the water main extension in question. This is precisely what the *Taylor* v. *Dimmitt* opinion says cannot be done. In the construction of V.A.M.S., Sec. 91.020, an identical statute to the one in question, side by side in the statute book and differing only because one refers to electrical power extensions and the other refers to waterworks, the *Taylor* v. *Dimmitt* case held "The apparent logical conclusion to be drawn from the legislation (referring to Section 91.020 as then differently numbered) is that the legislature knowingly and purposely withheld from the city owning the plant the authority to construct, maintain and operate an electrical transmission line outside its corporate limits * * *." There can be no greater or more direct conflict than is here shown between the *Taylor* v. *Dimmitt* case and the Kansas City Court of Appeals opinion.

3. Because this conflict was so positive, we de-emphasized the some seventeen errors made in the Kansas City Court of Appeals opinion and which, if this application is denied, will still stand as law.

4. Because of the positiveness of the conflict, we did not point out to the Court that this is a matter of great interest to a great many inhabitants of water districts operating on the perimeter of large cities such as Kansas City, Missouri. The result of this case can be chaotic to the operation of these districts because it permits a large municipality to willy-nilly expand its services into these districts and in direct competition thereto. It is for this reason that we have maintained throughout this litigation that this is not only an illegal expansion which was sought to be enjoined, but it is a highly impractical and unreasonable conclusion.

WHEREFORE, we urge the Court to take another look at this Kansas City Court of Appeals opinion in the light of the Supreme Court's opinion in *Taylor* v. *Dimmitt* so that the *Taylor* v. *Dimmitt* case can be expressly overruled and set aside if it is not still the law. The inhabitants of these water districts as well as the Directors, who are able businessmen who give their time to this public office for nothing, are entitled to know from this Court the extent of their duties and obligations and the extent to which encroachment can prevail. This Court's *Taylor* v. *Dimmitt* case says there cannot be such encroachment, and the Kansas City Court of Appeals has now said that there can be. We feel that the *Taylor* v. *Dimmitt* case is right and should be followed.

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By /s/ Charles W. Hess
Attorneys for Appellant
Floor Three, Union National Bank Building
Kansas City, Missouri HA 1-6388
Hendren and Andrae
By /s/ Henry Andrae
Attorneys for Appellant
7th Floor, Commerce Central Trust Building
Jefferson City, Missouri

Copy of the foregoing Motion was mailed to Mr. John Gaylord, 1066 Home Savings Bldg., Kansas City, Mo.; Messrs. Herbert C. Hoffman and Ned Bahr, City Hall, Kansas City, Mo.; and Mr. Ed Aylward, 900 Commerce Bldg., Kansas City, Mo., Attorneys for Respondents, on this ..... day of January, 1967.

APPENDIX F

Order Denying Motion

And thereafter, on the 20th day of January, 1967, the following proceedings were had and entered of record in said cause, to-wit:

Jackson County Water Supply District No. 1, Appellant, vs. Ong Aircraft Corporation, a corporation, et al., Respondents.	52 709

Now at this day, on consideration of the motion of appellant for leave to file motion for rehearing and reconsideration and the motion to recall mandate in the above-entitled cause, it is ordered by the Court that both of the said motions be, and the same are, hereby denied.

The Motion for Rehearing and Reconsideration which was tendered but *the filing thereof* in the Supreme Court of Missouri *denied* is in words and figures following, to-wit:

IN THE SUPREME COURT OF THE STATE OF MISSOURI

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Appellant and Movant,
vs.
ONG AIRCRAFT CORPORATION, et al.,
Respondents.

Division No. .....
Case No. 52709

Motion for Leave to File Motion for Rehearing and Reconsideration and Motion to Recall Mandate

Comes now the appellant and movant in the above matter and respectfully moves that the Supreme Court grant it leave to file its Motion for Rehearing and Reconsideration of its Order of Denial of its application to transfer this cause from the Kansas City Court of Appeals entered January 9, 1967, and further moves that the Court recall its mandate issued to the Kansas City Court of Appeals on January 11, 1967, and for grounds in support of said motion states:

1. The movant believes that the Court may have had insufficient time to fully consider an exhibit submitted to the Court on January 6, a Friday, and in view of the Court's Order of Denial made on a Monday, January 9; said exhibit had been referred to and incorrectly quoted by the respondents in their Suggestions in Opposition to the Application to Transfer.

2. This additional exhibit corroborates movant's position that the Opinion of the Kansas City Court of Appeals was in direct conflict with the prevailing Opinion of the Supreme Court in *Taylor* v. *Dimmitt*, 78 S.W.2d 841, interpreting Section 91.050, V.A.M.S. Reference is made to the

said "Motion for Rehearing and Reconsideration" for further evidence in support of this motion.

3. The Court's mandate in this case was sent to the Kansas City Court of Appeals on January 11, and should be recalled if this motion for leave to file the mentioned motion is granted.

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By /s/ Charles W. Hess
Attorneys for Appellant
Floor Three, Union National Bank Building
Kansas City, Missouri HA 1-6388
Hendren and Andrae
By /s/ Henry Andrae
Attorneys for Appellant
7th Floor, Central Trust Building
Jefferson City, Missouri 636-8135

PROOF OF SERVICE

The undersigned certifies that a complete copy of this instrument was served upon the attorneys of record of each party to the above action by enclosing the same in envelopes addressed to said attorneys at their business address as disclosed in the pleadings of record herein, with first-class postage fully prepaid, and by depositing said envelopes in a U. S. post office mailbox in Jefferson City, Missouri, on the 19th day of January, A.D. 1967.

/s/ Henry Andrae

APPENDIX G

Recitation of Sections 91.020 and 91.050, V.A.M.S.

MISSOURI STATUTES, the latter one cited by the Kansas City Court of Appeals Opinion and the former one construed by the Supreme Court in *Taylor* v. *Dimmitt*.

"91.020. Cities empowered to sell light and power

Any city in this state, which owns and operates any electric light or power plant, may, and is hereby authorized and empowered to supply electric current from its light or power plant to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor for such time and upon such terms and under such rules and regulations as may be agreed upon by the contracting parties. (R.S. 1939, §7787)"

"91.050. Cities owning waterworks may supply other cities, etc.

Any city in this state which owns and operates a system of waterworks may, and is hereby authorized and empowered, to supply water from its waterworks to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor, for such time, upon such terms and under such rules and regulations as may be agreed upon by the contracting parties. (R.S. 1939, §7790)"

APPENDIX H

(R. Ex. 13)

Public Water Supply District No. 1 of Jackson County, Missouri

Balance Sheet
October 31, 1962

ASSETS

Current Assets			
Cash on Hand	$ 150.00		
Grandview Bank (Water Revenue Fund)	62,302.12		
Grandview Bank (Construction Fund)	1.58		
Grandview Bank (Special Obligation Bond Retirement Reserve Fund))	648.75		
Grandview Bank (Construction Fund)	5,055.25		
Hickman Mills Bank (Developers Fund)	1,841.49		
Hickman Mills Bank (Customer Deposits)	19,178.83	$ 89,178.02	
Consumers Accounts Receivable		10,413.57	
Federal Depository Receipts		542.81	
Prepaid Insurance		5,316.05	
Total Current Assets			$ 105,450.45
Other Assets			
Deposit—Missouri State Highway			50.00
Investments			
United States Government Bonds		$ 36,000.00	
Certificate of Deposit		15,000.00	51,000.00

Mixed Assets		
Land	$ 12,832.10	
Buildings	18,059.72	
Distribution System	1,380,233.50	
Towers & Reservoir	215,223.00	
Pump Houses	43,783.66	
Pumps & Motors	30,740.79	
Meters	370,201.00	
Compressors	6,674.93	
Furniture & Fixtures	15,432.97	
Equipment	23,932.91	
Operating Tools	2,857.38	
Automobiles & Trucks	10,121.55	
	$2,130,093.51	
Less—Reserve for Depreciation	279,072.02	1,851,021.49
Inventory		
Pipe Line Materials	$ 15,698.94	
Service Connection Materials	3,173.00	
Repair Parts	8,309.10	27,181.04
Sinking Fund Assets		
Cash in Bank available for the payment of Principal & Interest on General Obligation Bonds	$ 9,651.90	
Certificates of Deposit	40,000.00	
U. S. Treasury Bill	9,657.91	59,309.81
TOTAL ASSETS		$2,094,012.79

Subject to comments in accompanying report.

Public Water Supply District No. 1 of Jackson County, Missouri

Balance Sheet
October 31, 1962

LIABILITIES

Current Liabilities			
Accounts Payable		$ 14,596.82	
F.I.C.A. Tax		208.24	
Federal Withholding Tax		542.81	
Missouri Sales Tax		343.05	
Missouri Withholding Tax		25.71	
Accrued Interest		923.95	
Total Current Assets			$ 16,640.58
Water Service Deposits—Customers			30,178.83
Developers Rebates			124,019.84
Developers Advance Capital			1,841.49
Bonded Debt			
Special Obligation Bonds, Principal & Interest, payable out of net income from operation of the district		$113,366.00	
General Obligation Bonds, Principal & Interest payable out of Sinking Fund created by direct tax levy on property within the district		235,337.77	348,703.77
Reserve for Retirement & Interest General Obligation Bonds			
Balance October 31, 1961	$ 53,994.12		
Tax Collection during the year	23,602.22		
Interest on Certificates of Deposit	591.53	78,187.87	

Less—Principal & Interest Payments	$ 18,001.80		
Payment to General Fund	876.26	18,878.06	
Balance October 31, 1962			59,309.81
Surplus			
Contributed by Public Works Administration		$136,462.42	
Donated Surplus		216,487.83	
Tax Collections applied in payment of General Obligation Bonds		324,342.59	
General Obligation Bonds Premium		3,310.50	
Equity Transfer to Kansas City, Missouri		(961,402.67)	
Operating Profit:			
Balance October 31, 1961	$1,773,164.92		
Net Profit—Fiscal Year Ended October 31, 1962	20,952.88		1,513,318.47
TOTAL LIABILITIES			$2,094,012.79

Subject to comments in accompanying report.

APPENDIX I

Water Districts in Missouri Having Revenue Bond Issues Guaranteed by Farmers Home Administration, March, 1967

No. of Districts	County	District Numbers	Amount of Bond Issue	Additional Applications Pending
2	Jackson	13	$ 545,000	
		14	144,000	
4	Platte	2	417,000	X
		3	199,000	
		4	330,000	Loan & Grant, $67,000
		5	338,000	
4	Clay	3	345,000	
		4	265,000	
		5	210,000	
		6	270,000	
6	Boone	1	110,000	
		2	250,000	
		4	579,000	
		6	500,000	
		7	275,000	
		9	694,000	
6	Jefferson	2)		
		3)		
		5)	6,000,000	
		6)		
		7)		
		8)		
1	Green	1	131,000	
2	Butler	1	635,000	
		2	575,000	
		TOTAL	$12,812,000	

APPENDIX J

Public Water Supply District No. 1 of Jackson County, Missouri

BALANCE SHEET — OCTOBER 31, 1966

ASSETS

Current Assets			
Cash on Hand	$ 150.00		
Grandview Bank (Bond Retirement Fund)	767.66		
Grandview Bank (Water Revenue Fund)	33,058.61		
Grandview Bank (Customers' Deposits)	18,128.25		
Grandview Bank (Construction Escrow)	1,460.02		
Grandview Bank (Developers Fund)	2,088.90		
Suburban Bank	622.83		
Hickman Mills Bank	14,831.63	$ 71,107.90	
Customers' Accounts Receivable		10,435.07	
Prepaid Insurance		2,001.35	$ 83,544.32
Other Assets			
Deposit—Missouri State Highway			50.00
Investments			
United States Government Bonds		$ 11,000.00	
Certificates of Deposit		13,231.01	24,231.01
Fixed Assets			
Land		$ 12,832.10	
Buildings		20,103.19	
Distribution System		1,772,922.47	
Towers and Reservoir		224,146.75	
Pump Houses		43,795.66	
Pumps and Motors		30,910.79	
Meters		398,231.22	
Compressors		6,674.93	
Furniture and Fixtures		20,018.77	

Equipment		25,881.10	
Operating Tools		2,857.38	
Automobiles and Trucks		18,732.22	
Total		$2,577,106.58	
Less—Reserve for Depreciation		467,341.28	2,109,765.30
Inventory			
Pipe Line and Connection Materials			35,052.23
Sinking Fund			
Cash in Grandview Bank		$ 14,917.19	
Certificates of Deposit		68,601.44	83,518.63
TOTAL ASSETS			$2,336,161.49

Public Water Supply District No. 1 of Jackson County, Missouri

BALANCE SHEET OCTOBER 31, 1966

LIABILITIES

Current Liabilities			
Accounts Payable		$ 14,762.26	
F.I.C.A. Taxes	$ 203.88		
Federal Withholding Taxes	697.00		
	$ 900.88		
Less—Depositary Receipt	697.00	203.88	
Missouri Sales Tax		682.80	
Missouri Withholding Taxes		44.45	$ 15,693.39
Other Liabilities			
Water Service Deposits—Customers		$ 29,093.53	
Developers' Rebates		139,990.58	
Developers' Advance Capital		14,831.63	
Missouri Highway Commission		55,349.67	239,265.41

Bonded Debt			
Special Obligation Bond, Principal and Interest, payable out of net income from operation of the district		$ 84,625.32	
General Obligation Bonds, Principal and Interest, payable out of sinking fund created by direct tax levy on property within the district		197,562.85	282,188.17
Reserve for Retirement and Interest			
General Obligation Bonds			
Balance October 31, 1965	$ 77,704.53		
Tax Collections during year	20,843.62		
Interest on Certificates of Deposit	1,852.40	$ 100,400.55	
Less — Principal and Interest Payments		16,881.92	83,518.63
Surplus			
Contributed by Public Works Administration		$ 136,462.42	
Donated Surplus		233,623.63	
Tax Collections applied in payment of General Obligation Bonds		362,117.51	
General Obligation Bonds Premium		3,310.50	
Equity Transfer to Kansas City, Missouri		(961,402.67)	
Operating Profit, Balance October 31, 1965	$1,907,984.33		
Net Profit—Fiscal Year Ended October 31, 1966	33,400.17	1,941,384.50	1,715,495.89
TOTAL LIABILITIES			$2,336,161,49

APPENDIX K

Transcript of Testimony of Mark Lucas, Investment Broker

Q. If another municipality or another water company constructed or proposed to construct competing lines, would you say that that would or would not affect the bondholders of Public Water Supply District No. 1?

* * *

A. Yes, any infringement on the boundary lines or the covenants of the bond issue or anything that might cause the original borrower to have trouble, any contemplation of that would be very detrimental. Actually, if Kansas City, Missouri steps in a little piece here and—

* * *

Q. (By Mr. Hess) If the practice, or if the acts which brought about this application for a temporary injunction were permitted to continue in a progressive fashion, would you say that that would be beneficial or detrimental to the bondholders of Public Water Supply District No. 1?

* * *

A. It definitely would affect the bondholder.

Q. (By Mr. Hess) Do you know, in your experience, of any water or other utility situation where revenue bonds of competing facilities can be sold?

A. Revenue Bonds?

Q. Yes. A. I can't think of a situation in the Middle West where you could, where they have issued revenue bonds to build a competing system. I can—I can name you a few towns where they have issued general obligation bonds and built a competing electric system, but answering your question, I can not think of any where they have issued revenue bonds to build a water system, competing water system, a municipal competing—a municipality competing.